IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.523 OF 1996.

Gajjasingh Sumarasingh
r/o. near Brk.668,
behind Central Hospital,
Tej Bahadur Colony,
Ulhasnagar -3. .. Appellant

vs.

Manjinath Tukoba Revankar
r/o. TejBahadur Colony,
behind Central Hospital,
Ulhasnagar 3. .. Respondent

M.D.Angal, Advocate for the Appellant.

Ms.Leena Patil i/b. P.M.Pradhan, Advocate for the Respondent.

CORAM : S.R.SATHE, J.

DATED : 23RD AUGUST, 2004.

JUDGMENT :

1. Being aggrieved by the judgment and order passed by the Court of Second Additional District Judge in Civil Appeal No.215 of 1993 whereby the order passed by the Court of IInd Joint Civil Judge Junior Division, Ulhasnagar in Regular Civil

Suit No. 76 of 1987 decreeing the plaintiffs suit was confirmed and the appeal was dismissed, the original defendant has preferred this appeal. (For the sake of convenience hereafter the parties shall be referred to as plaintiff and defendant.)

2. The brief facts giving rise to this appeal are as under :

. That the suit property described in detail in para 1 of the plaint was purchased by plaintiff on 28.10.1976 by virtue of registered sale deed for consideration of Rs.21,000/-. At the time of said sale deed the defendant was in possession of one room as licensee of the vendor. Infact, he was to vacate the suit property but he requested the plaintiff to permit him to occupy the suit property for the period of one month as licensee. The plaintiff therefore allowed him to occupy the suit property as a licencee for a period of about one month. After completion of the said period the plaintiff asked the defendant to vacate the suit premises and for that purpose issued notice dated 13.12.1986 to the defendant. The defendant

gave reply to the said notice and raised several contentions and refused to hand over the possession. Hence plaintiff filed the present suit. The defendant filed his written statement and opposed the suit claim by contending that the suit property is in his possession as a tenant since the time it was owned by plaintiffs vendor. He had never handed over the possession to plaintiff and as such there was no question of plaintiff giving the suit premises to him as a licensee. The defendant also contended that as plaintiff has failed to give inspection of the title deed it is clear that plaintiff is not the owner of the suit property. He therefore prayed that suit be dismissed. On these pleadings the learned trial judge framed issues and after considering the oral and documentary evidence adduced by both the parties came to the conclusion that plaintiff has proved that the suit premises were given to defendant as licensee and the licence has been properly terminated and as such the defendant is liable to handover the possession. The trial Court therefore decreed the suit. The defendant preferred the appeal.

However, the same was also dismissed. Being aggrieved by the same the defendant filed the present second appeal.

3. From the perusal of the record it appears that at the time of admission following order has been passed by this court. "Admit. Substantial question of law involved as framed in grounds 8 to 10". The said grounds are as under :

> 8. As the lower appellate court proceeded under wrong impression that the appellant-defendant has neither pleaded about tenancy nor stated in his evidence about the tenancy, the entire oral evidence has been appreciated in the perverted manner, in sense that the appellant must be in possession of the suit premises as the licensee.
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> 9. The courts below lost the sight of the fact that the appellant in the reply notice has in clear and unambiguous terms has asserted his right as a tenant and so the court below have wrongly came to the conclusion that the appellant-defendant was in possession as the licensee.
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> 10. The lower appellate court has wrongly relied upon the complaint at Ex.44 for coming to the conclusion about the nature of the possession viz lease or licence., n fact, such inference is to be drawn on the basis of the intention of the parties. This wrong approach of the lower appellant court clearly indicates its perverse appreciation of evidence.

4. Though above mentioned substantial questions of law have been formulated Shri Angal, learned Advocate for the defendant/appellant has infact urged only one point. He submitted that in the instant suit the plaintiff had infact failed to prove his title as he had not produced the original sale deed by virtue of which he purchased the property in question. He, therefore, submitted that the plaintiffs' suit was liable to be dismissed. As against this the learned advocate for the plaintiff/respondent supported the judgment and order passed by the first appellate court.

5. From the perusal of the plaint it is very clear that the plaintiff had specifically averred that he purchased the property in question on 28.10.1986 from his vendor for consideration of Rs.21,000/-. Not only that he has also specifically stated that at that time the defendant was occupying the said property as licensee and he promised to vacate the same within the period of one month. Taking into consideration the contention raised by the

defendant the burden was obviously on the plaintiff to prove his title to the suit property. Normally, in order to prove the title it was necessary for him to produce the original sale deed and to prove the same. However, it appears that instead of producing the original sale deed the plaintiff simply produced the true copy of the sale deed and while in the witness box he deposed that the original sale deed is with the Registrars office and he could not get the certified true copy. He however deposed that on the basis of the said sale deed he had submitted an application to the Municipal Council and accordingly his name was entered by the Municipal Council as owner of the suit property. Not only that but he also paid the taxes and for that purpose he produced the tax receipt alongwith the copy of the sale deed. He also produced extract of Index No.2 exhibit 34. Taking into consideration the oral evidence of the plaintiff and the witness who was attesting witness of the sale deed in question and having regard to the fact that the plaintiff had also produced the extract of index no.2, the court below held that the plaintiff has proved that he

is the owner of the suit property. Infact, the learned Advocate for the appellant/defendant could not point out to me any specific statutory provision or any ruling of the Apex Court wherein it has been held that ownership to property can be held to be proved only if the original sale deed is produced and proved and in absence of the original sale deed the court has to record negative finding regarding ownership. We can not ignore the fact that the court has to take into consideration all the oral as well as documentary evidence on record and considering the evidence an the preponderance of probabilities Court has to decide whether the plaintiff has proved the suit claim or not. In the instant case, admittedly plaintiff has stated that his vendor sold the property to him and sale deed was executed. The plaintiffs' witness corroborated the say of the plaintiff. Not only that we find that index no.2 exhibit 34 shows that the name of the plaintiff is entered in the record of rights as the owner of the suit property. It shows that the plaintiff has purchased the property in question on 28.10.1986 for consideration of Rs.21,000/-. This

index is obviously prepared on the basis of the sale deed. So this document is also sufficient atleast to come to the conclusion that the suit house has been sold under particular sale deed by the plaintiff. The plaintiff has also produced the receipts issued by the Municipal Council and has examined the concerned person from the Municipal Council to show that those tax receipts have been issued by the said Municipal Council. So from this evidence the courts below have rightly held that the plaintiff has proved his ownership of the property in question.

6. There is another aspect of the matter . It is an admitted fact that the defendant had filed an application for restoration of the water supply. The said application is at exhibit 19. Similarly he had also filed a complaint with Ulhasnagar police station, copy of which is produced at exhibit 44. In both of these documents the defendant himself has admitted that the plaintiff is the owner of the suit property. It must be noted that though there was sufficient opportunity for the defendant to explain this

admission, he has not satisfactorily explained the same. So, having regard to all this evidence and considering the preponderance of probabilities I think that both the courts below have rightly held that the plaintiff is the owner and has proved his title to the said property.

7. The learned Advocate for the Appellant/Defendant has infact not made any other submissions before me on the point as to whether the defendant is a licensee or not. However, from the perusal of the judgments of both the courts below it is very clear that admittedly the defendants could not produce any evidence to show that the suit property was let out to him or that at any particular time he had paid rent or licence fee to the plaintiff or to his purchaser in title. So, under such circumstances both the courts below recorded finding of fact that defendant is not the tenant but is a licensee. The finding recorded by the courts below can not be said to be perverse. There is no reason to interfere with the same.

8. In this view of the matter there is no

substance in this appeal. Appeal is dismissed with costs.

(S.R.Sathe, J.)